

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 863 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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DECEASED SHANKERBHAI N HARIJANTHROUGH HIS HEIRS

Versus

STATE OF GUJARAT

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Appearance:

Shri B.S.Patel, Advocate, for the Petitioners.

Shri U.R.Bhatt, Assistant Government Pleader, for the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 16/08/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Vadodara (respondent No.2 herein) on 27th April 1993 under Section 8 (4) of the Urban Land (Ceiling and

Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.3 herein) on 8th August 1995 in Appeal No.Vadodara-46 of 1994 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of the deceased predecessor-in-title of the present petitioners to be in excess of the ceiling limit by 3279.50 square metres.

2. The facts giving rise to this petition move in a narrow compass. The predecessor-in-title of the present petitioners was one Shankarbhai Narsinhbhai Harijan (the deceased for convenience). He filed his declaration in the prescribed form under Section 6 (1) of the Act with respect to his holding within the urban agglomeration of Vadodara. It included one parcel of land bearing survey No.419 admeasuring 3947 square metres (the disputed land for convenience). It enjoyed exemption under Section 20 (1) of the Act. The aforesaid declaration filed by the deceased was processed by respondent No.2. By his order passed on 2nd January 1986 under Section 8 (4) of the Act, the holding of the deceased was declared to be surplus by 233.5 square metres. At that time, the disputed land was excluded from the holding of the deceased in view of grant of exemption under Section 20 (1) of the Act. The notification under Section 10 (1) of the Act for the land declared surplus was published in the Government Gazette on 21st August 1986 followed by the notification under Section 10 (3) of the Act published in the Government Gazette on 24th September 1987. Possession of the excess land was also taken on 6th May 1988. It appears that the deceased breathed his last soon thereafter leaving behind him the present petitioners as his heirs and legal representatives. They moved the State Government for withdrawal of the exemption with respect to the disputed land. By the order passed on 15th May 1991, the exemption qua the disputed land came to be withdrawn. Thereupon, the disputed land was treated as a vacant land. The case was thereupon reopened for the purposes of the Act. Thereafter, by the further order passed under Section 8 (4) of the Act, respondent No.2 declared the holding of the deceased in the hands of the petitioners to be in excess of the ceiling limit by 3279.50 square metres. Its copy is at Annexure-A to this petition. The aggrieved petitioners carried the matter in appeal before respondent No.3 under Section 33 of the Act. It came to be registered as Appeal No.Vadodara-46 of 1994. By the order passed on 8th August 1995 in the aforesaid appeal, respondent No.3 dismissed it. Its copy is at Annexure-B

to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. Learned Advocate Shri Patel for the petitioners has submitted that the disputed land was a piece of agricultural land and it ought to have been excluded from the holding of the deceased in view of the binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM v. STATE OF U.P. reported in AIR 1993 Supreme Court at page 2465. As against this, learned Assistant Government Pleader Shri Bhatt for the respondents has urged that the attention of the authorities below was not focused on this aspect of the case and, in absence of relevant material on record for applicability of the aforesaid binding ruling of the Supreme Court, the disputed land cannot be excluded from the holding of the deceased.

4. It appears that the attention of the authorities below was not focused on the applicability of the aforesaid binding ruling of the Supreme Court. It cannot be gainsaid that for the purpose of its applicability three questions will have to be answered:

- (i) Was any master plan answering its definition contained in Section 2 (h) of the Act in existence on the date of coming into force of the Act?
- (ii) What was the situation of the disputed land therein if it was in existence?
- (iii) Were agricultural operations, in fact, carried on in the disputed land on the date of coming into force of the Act?

Since the aforesaid three questions involve investigation into fact, it is desirable that the matter is investigated by respondent No.2. The impugned orders at Annexures-A and B to this petition will have to be set aside for the purpose and the matter will have to be remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of the aforesaid three questions and in the light of the aforesaid binding ruling of the Supreme Court. This judgment of mine has not to be construed as a direction from this Court to reopen the appellate proceeding concluded by taking over on 6th May

1988 of the excess land declared surplus to the tune of 233.5 square metres.

5. In the result, this petition is accepted. The order passed by the Competent Authority at Vadodara (respondent No.2 herein) on 27th April 1993 at Annexure-A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 8th August 1995 in Appeal No.Vadodara-46 of 1994 at Annexure-B to this petition is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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